

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**Criminal Misc 34202-M of 2007**

Date of decision: 10.7.2007

Bablu Yadav

...Petitioner

Versus

State of Haryana

...Respondent

Present: Mr Jagdish Manchanda, Advocate for the petitioner.  
Mr Narender Sura, AAG Haryana

**S.S. SARON, J.**

Heard counsel for the parties.

The FIR in the case has been registered on the statement of Ranjit Singh who has alleged that his minor daughter – Jyoti aged 17 years, on 11.12.2006, had gone to purchase wool but did not return. Thereafter, he had a suspicion that the petitioner had enticed her. On the basis of the allegations, FIR for the offences under Sections 363, 366 and 376 IPC has been registered which is pending trial. The case of the petitioner is that he married the prosecutrix on 12.12.2006 at Arya Samaj, 2164, Yamuna Bazar, Delhi. A copy of the marriage certificate (Annexure P1) issued by the Arya Samaj has been placed on record. The prosecutrix initially made a complaint (Annexure P2) addressed to the SP Faridabad seeking protection for herself and her husband (petitioner) as also her in-laws from her father – Ranjit Singh. The prosecutrix who earlier made the complaint ( Annexure P2 ) has now made a statement against the present petitioner. The date of birth of the prosecutrix is 26.3.1989. The petitioner was arrested on

30.1.2007 and has since then been in custody. The trial in the case is going on.

On the facts and circumstances of the present case, it is to be ascertained during trial as to whether the prosecutrix was enticed away by the petitioner to go with him or she had gone of her own free will and desire. In *Lalta Prasad v. State of MP* 1979 Criminal Law Journal 867, it was observed by the Supreme Court that the girl had gone with the accused therein of her free will and with the consent of her mother. There was no proof that she was taken by the accused to seduce her to illicit intercourse. The accused was held to be not guilty of the offence under Section 366 IPC. In the said case, the prosecution had failed to prove by reliable evidence that the girl was below 16 years of age at the time of the alleged occurrence. As such, the accused was held to be not guilty also of the offence under Section 376 IPC. In the present case, the prosecutrix is admittedly more than 17 years of age. In *S. Vardaranjan v. State of Madras* AIR 1965 SC 942, it was held that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the

accused by complying with her wishes can by no stretch of imagination be said to have “taken” her out of the keeping of her lawful guardianship, that is the father in the said case. The Himachal Pradesh High Court in **Kamal Singh v. The State of HP 1985(1) Crimes 151** considered the case where there was some intimacy between prosecutrix and the appellant in the said case and the prosecutrix was willing and active agent in her enticement and she accompanied the accused of her own accord while her parents were asleep, it was held that even though the prosecutrix was below 18 years would not be material. The accused therein was acquitted. The Delhi High Court in **Bhagwan Singh and others v. State and another** 2007(1) RCR (Criminal) 347 considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void or illegal on account of his or her being less than 18 years but over 15 years of age.

In the present case, the petitioner is in custody since 31.1.2007. The prosecutrix was above 17 years of age at the time of the incident. The question as to whether she was indeed enticed away or not is to be gone into and considered after trial.

For the foregoing reasons, the criminal misc petition is allowed. The petitioner on his furnishing personal bond and surety to the satisfaction of the learned CJM Faridabad shall be admitted to bail. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case and the learned trial Court shall consider the case on the basis of evidence and material as produced before it.

10.7.2007.  
ASR

( S.S.SARON )  
JUDGE